

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

Jeffrey E. Marion, Esq.
Michele Obermuller
Katie McDonnell

COMPLAINT

Case No.

Plaintiffs

vs.

Michael J. Astrue, Commissioner of Social Security
Debra L. Bice, Chief Administrative Law Judge, Social Security Administration
Kirsten J. Moncada, Executive Director of the Office of Privacy and Disclosure
for the Social Security Administration

Defendants

The Plaintiffs, complaining of the Defendants, do hereby allege and say that:

JURISDICTION

1. This is a suit to enjoin the Social Security Administration Office of Adjudication, Disability & Review from withholding certain information and to order the Defendants to produce the requested information that is being withheld by them in violation of the Freedom of Information Act (5, U.S.S. §522) and the regulations promulgated under that Act.

2. This court has subject matter jurisdiction of Freedom of Information Act suits under the Act itself, 5 U.S.C. § 522(a)(4)(B0).

PARTIES

3. Plaintiff Jeffrey E. Marion, your deponent herein, is an attorney licensed to practice law in the States of New York, Pennsylvania and Colorado and the United States Court for the Western District of New York.

4. Plaintiff Michele Obermuller resides at 504 15th Street, City of Niagara Falls, County of Niagara, State of New York 14301. Ms. Obermuller filed an application for Disability Insurance

benefits and Supplemental Security Income benefits On October 2, 2008. These claims were denied initially on January 20, 2009. Ms. Obermuller filed a written request for hearing on January 28, 2009. She appeared and testified at a hearing held on August 19, 2010. She received an unfavorable determination September 3, 2010. She subsequently filed a request for review by the Appeals Council. On April 14, 2012, the Appeals Council remanded the matter for a new hearing, and the Buffalo Office of Disability, Adjudication & Review has scheduled that hearing for October 22, 2012 at 10:45 a.m.

5. Plaintiff Katie McDonnell filed an application for Supplemental Security Income benefits on March 21, 2011. She received a Notice of Disapproved Claim on July 28, 2011, and subsequently filed a request for hearing by Administrative Law Judge on August 25, 2011. Her hearing, originally scheduled for October 26, 2012, has been recently adjourned by the Office of Disability, Adjudication & Review to December 5, 2012 at 9:15 a.m.

6. Defendant Michael J. Astrue is the Commissioner of Social Security, and as such, has authority to issue the Social Security Administration's final decisions with respect to the production of documents sought pursuant to the Freedom of Information Act, and with respect to the Plaintiffs' request for production of information.

7. Defendant Debra L. Bice, the Chief Administrative Law Judge of the Office of Disability, Adjudication & Review, is the officer overseeing the Office of Disability, Adjudication & Review, who instituted the policy and who also refuses to comply with Plaintiffs' request under the Freedom of Information Act.

8. Defendant Kirsten J. Moncada is the Executive Director of the Office of Privacy and Disclosure, who issued the final determination denying the Plaintiffs' request under the Freedom of Information Act.

RELIEF REQUESTED

9. The Defendants' actions in denying the Plaintiffs the requested information are illegal in that the Freedom of Information Act requires the production of the information sought. To the extent that the Defendants have any discretion in releasing the information sought, they have abused their discretion in withholding the information from the Plaintiffs in this case.

10. Plaintiffs' have exhausted all administrative remedies.

WHEREFORE, Plaintiff demands judgment as follows:

- A. For a judgment declaring the Social Security Administration Office of Disability, Adjudication & Review's policy withholding the identification of Administrative Law Judge's assigned to hear cases as in violation of the Freedom of Information Act, and thus void;
- B. Directing the Defendants to release to the Plaintiffs the names of any and all Administrative Law Judges assigned to any open case for any Plaintiff of this Action;
- C. That the Plaintiffs be awarded costs and attorney's fees;
- D. For all other relief that may be just and proper.

DATED: October 4, 2012

/s/ Jeffrey E. Marion
JEFFREY E. MARION, ESQ.
Attorney for Plaintiffs
The Williamsville Law Center Building
17 Beresford Court
Williamsville, New York 14221
(716) 565-2000